

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.3339 of 2025

Applicant : Yousuf son of Muhammad,
Through: Mr. Mallag Assa Dashti,
advocate

The State : The State: Through Ms. Seema Zaidi,
Addl. P. G. Sindh a/w Investigating
Officer SI-Rasheed.

Date of hearing : 23.02.2026

Date of Order : 23.02.2026

ORDER

Jan Ali Junejo, J:-- Through the instant post-arrest bail application, the applicant seeks his release on bail in case bearing FIR No.244/2025 registered at Police Station Baghdadi, Karachi, for the offences punishable under Sections 322, 337-A(i) and 288 P.P.C. The Applicant earlier approached the Sessions Court by filing the Criminal Bail Application No.2700 of 2025 and Criminal Bail Application No.3867 of 2025, which were dismissed by the Court of learned Ist Additional Sessions Judge, Karachi-South (MCTC) vide Orders dated: 04.09.2025 and 29.10.2025.

2. Briefly stated, as per contents of the FIR lodged by Altaf Hussain, Deputy Director SBCA Lyari, Karachi, on 17.07.2025 at about 1400 hours he received information that the roofs of a residential building situated at Jhakoi Mohalla, Street No. B-3, Madina Masjid Road, Khadda Lyari, Karachi had collapsed. Upon reaching the spot, it was allegedly found that the building known as "Ghani Mansion" constructed on Plot No.1444 consisted of ground plus five floors and the present applicant was allegedly engaged in illegal construction on the fifth floor without approval or permission from the competent authority of SBCA and without adopting safety measures. It is alleged that due to such negligent construction, the roof of the fifth floor collapsed onto the fourth floor, resulting in

collapse of the fourth floor roof as well, due to which two women namely Hurmat and Hamida later succumbed to injuries while three other women sustained injuries. Consequently, the present FIR was registered against the applicant for the above offences.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in the present case. He argued that the applicant was merely a tenant residing in the building on pagri basis and had no concern with the alleged construction, which according to the investigation was actually undertaken by the real owners of the building who have been shown as absconding in the final challan. He further submitted that the investigation officer in the final report has acknowledged that there is no independent evidence available to connect the applicant with the alleged offence. It was further contended that the offences alleged do not fall within the prohibitory clause of Section 497 Cr.P.C., particularly Section 322 P.P.C. which does not provide punishment of imprisonment but only prescribes diyat as compensation payable to the legal heirs in accordance with the injunctions of Islam. Learned counsel also submitted that the applicant has been in custody since 17.07.2025 and is no more required for investigation, therefore the case at best calls for further inquiry. Lastly, he prayed that the applicant may be admitted to bail.

4. Conversely, learned Additional Prosecutor General for the State opposed the bail application and argued that the applicant has been specifically nominated in the FIR with the allegation that due to his negligent act of carrying out illegal construction on the fifth floor without permission and without safety measures, the roof collapsed causing death of two women and injuries to three others. It was further contended that statements of injured witnesses support the prosecution case and prima facie connect the applicant with the alleged offence. Therefore, according to the learned law officer, there are reasonable grounds to believe that the applicant has

committed the offence and he is not entitled to the concession of bail. She thus prayed for dismissal of the bail application.

5. I have heard the learned counsel for the parties and have carefully examined the record available on file. The principal allegation against the applicant is that he allegedly carried out illegal construction on the fifth floor of the building without approval of the competent authority and without adopting safety measures, which allegedly resulted in collapse of the roof leading to the death of two ladies and injuries to three others. The offence relating to the death of the deceased persons has been brought under Section 322, P.P.C.

6. A bare reading of Section 322, P.P.C. (*Qatl-bis-Sabab*) reflects that the said provision does not provide any period of sentence of imprisonment, rather the punishment prescribed therein is Diyat payable to the legal heirs of the deceased in accordance with the injunctions of Islam, which essentially constitutes compensation. Consequently, the offence under Section 322, P.P.C. does not fall within the prohibitory clause of Section 497(1), Cr.P.C. Guidance in this regard can be sought from the judgment of the august Supreme Court of Pakistan in case of *Salman Khan v. The State* (2022 SCMR 515), wherein it has been held that:

“From the contents of the crime report, it appeared that an offence of qatl-bis-sabab punishable under section 322, P.P.C. was made out other than qatl-i-khata punishable under Section 319, P.P.C. However, qatl-i-amd under section 302 does not appear to be made out in the facts and circumstances of the case. Section 322, P.P.C. falls outside the prohibitory clause of section 497(1), Cr.P.C., while section 319, P.P.C. is bailable. That being so, the detention of the petitioner pending trial could only be justified if the case falls within the scope of any of the exceptions stated in the cases of Tariq Bashir v. The State (PLD 1995 SC 34), Muhammad Tanveer v. The State (PLD 2017 SC 733) and Zafar Iqbal v. Muhammad Anwar (2009 SCMR 1488).”

Thus, in view of the above authoritative pronouncement of the Hon'ble Supreme Court, the offence under Section 322, P.P.C. clearly falls outside the prohibitory clause, whereas the remaining offences alleged in the present case i.e., Sections 337-A(i) and 288, P.P.C. are also bailable in nature.

7. Furthermore, from the material placed on record, it appears that during the course of investigation the police have shown certain co-accused persons as absconders who are stated to be the owners of the building. The defence plea that the applicant was merely a tenant in the premises and had no concern with the structural construction of the building cannot be ignored at this tentative stage. The determination of such factual controversy requires deeper appreciation of evidence which can only be undertaken at the trial. It is also significant that the investigation has already been completed and the challan has been submitted before the trial court. The applicant has remained behind bars since 17.07.2025 and is no more required for further investigation. Nothing has been brought on record to suggest that the applicant is a previous convict or that there is any likelihood of his abscondence or tampering with the prosecution evidence. Keeping in view the nature of allegations, the legal position regarding the offence under Section 322 P.P.C., and the fact that the case at this stage appears to call for further inquiry within the meaning of Section 497(2) Cr.P.C., I am of the tentative view that the applicant has made out a case for grant of bail.

8. For the foregoing reasons, the instant bail application is allowed. The applicant Yousuf son of Muhammad is admitted to post-arrest bail in case bearing Crime No.244/2025 under Sections 322/337-A(i)/288 P.P.C. registered at Police Station Baghdadi, Karachi, subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac only) and a P.R. bond in the like amount to the satisfaction of the learned trial court. It is, however, observed that the findings recorded herein are tentative in nature,

made solely for the purpose of deciding the present bail application, and shall not prejudice the case of either party during the course of trial.

These are the detailed reasons for the Short Order dated 23.02.2026.

JUDGE